(5)

No. 91-542

In The

Supreme Court of the United States

October Term, 1991

ELLIS B. WRIGHT, JR., WARDEN, et al.,

Petitioners,

v.

FRANK ROBERT WEST, JR.,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit

PETITIONERS' REPLY BRIEF

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PETITIONERS' REPLY BRIEF

West asserts that the Court should deny certiorari because this case "raises no legal issue of national, or even local, concern." (Br. Op. 6). This contention is preposterous in view of the understandable and legitimate concern voiced by the twenty-five (25) States that have given Virginia their amicus support: "The Fourth Circuit's intrusion into matters of state law and policy is both unwarranted and unwise, and is of great concern to the States joined herein." (Florida Amicus Brief at 1).

The decision below simply cannot be reconciled with either *Teague v. Lane*, 489 U.S. 288 (1989), or *Jackson v. Virginia*, 443 U.S. 307 (1979). Both *Teague* and *Jackson* command federal court deference to the reasonable good faith judgments of state courts, and the Fourth Circuit's opinion is the antithesis of such deference. Indeed, West admits that the Court of Appeals premised its decision upon its own independent conclusion that his trial testimony attempting to explain his recent possession of stolen goods "was not so incredible or inherently implausible as to amount, in itself, to evidence of guilt." (Br. Op. 13). Surely, neither *Teague* nor *Jackson* permits a federal appeals court to so blatantly second-guess a jury determination that has been upheld by not just a state's highest court, but by a federal district court as well.

West's suggestion that the Criminal Justice Legal Foundation (CJLF) has conceded "implicitly" that the Fourth Circuit correctly applied *Jackson* is absurd. (Br. Op. 11 n.7). On behalf of CJLF, Mr. Scheidegger explicitly argues that "[i]f the state courts have fairly considered the claim and reached a conclusion within the bounds in

which reasonable judges can differ, that conclusion should not be disturbed." (CJLF Amicus Brief at 12). This concise statement of Virginia and CJLF's shared position is entirely consistent with both *Jackson* and *Teague*. West is simply wrong when he suggests that *Jackson* would have to be "altered" to "require deferential review of sufficiency findings by state courts" (Br. Op. 11 n.7); that is precisely what *Jackson* has *always* required. *See* 443 U.S. at 326.

Finally, the crux of this case "is whether the simple disagreement by a panel of the federal appellate court with the reasonable, considered judgment of the coequal state judiciary on a question within the latter's jurisdiction is sufficient ground for collateral attack on a final judgment." (CJLF Amicus Brief at 12). It would be difficult to imagine a question more fraught with implications for finality, comity and federalism, and this Court should grant certiorari so that henceforth all lower federal courts will understand that in the post-*Teague* era the question *must* be answered in the negative.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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